IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

Crl.MC.No. 2599 of 2007()

C.C.NO.114 OF 2004 ON THE FILE OF THE Judicial Magistrate of the First Class-I, KOLLAM

PETITIONER: ACCUSED:

R.PRASAD, S/O.RAJAN,
RESIDING AT S.P.NIVAS, PERUMPUZHA P.O.,
KUNDARA, KOLLAM.

BY ADV. SRI.JOHNSON GOMEZ

RESPONDENTS: COMPLAINANT:

---

1. THE STATE OF KERALA REPESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. R.RAJAN, AGED 62 YEARS,
RESIDING AT SAJU BHAVAN, PANAVILA, NEAR
DANMIA JUNCTION, PERUMPUZHA P.O., KUNDARA,
KOLLAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 17/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2599 of 2007

Dated this the 17th day of August, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. Proceedings were registered as early as in 2004. The complainant has not been crossed examined. On the date when the matter was posted for cross examination of the complainant, the petitioner was absent. It is submitted that his counsel had filed an application to excuse his absence and had expressed willingness to go on with the cross examination. The prayer was rejected. A non bailable warrant was issued against the petitioner. Thereafter from 22.09.06, the matter is being posted for appearance of the petitioner. Steps under Sections 82 and 83 are pending before the learned Magistrate.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence was not wilful. He is willing to surrender before the learned Magistrate and apply for bail. He shall co-operate with the court for an early disposal of the case. The petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with

law and expeditiously. It is therefore prayed that directions under Section 482 Cr.P.C may be issued in favour of the petitioner.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-